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19 (*additional filing parties listed on signature pages*)

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN FRANCISCO DIVISION**

Case No. 07-5944 SC

MDL No. 1917

24 **In re: CATHODE RAY TUBE (CRT)**
25 **ANTITRUST LITIGATION**

DEFENDANTS' AND DIRECT
ACTION PLAINTIFFS' POSITION
STATEMENTS REGARDING
SPECIAL MASTER'S MAY 2, 2013
REPORT AND RECOMMENDATION
ON MOTIONS TO DISMISS DIRECT
ACTION COMPLAINTS

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PLAINTIFFS' POSITION STATEMENTS
REGARDING SPECIAL MASTER'S MAY 2,
2013 REPORT AND RECOMMENDATION ON
MOTIONS TO DISMISS DIRECT ACTION
COMPLAINTS

Case No. 07-5944
MDL NO. 1917

This Document Relates to:

Electrograph Systems, Inc., et al. v. Hitachi, Ltd., et al., No. 11-cv-01656;

Stoebner, et al. v. LG Electronics, et al., No. 11-cv-05381;

Siegel v. Hitachi, Ltd., et al., No. 11-cv-05502;

Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al., No. 11-cv-05513;

Target Corp, et al. v. Chunghwa Picture Tubes, Ltd., et al., No. 11-cv-05514;

Interbond Corporation of America v. Hitachi, et al., No. 11-cv-06275;

Office Depot, Inc. v. Hitachi Ltd., et al., No. 11-cv-06276;

CompuCom Systems, Inc. v. Hitachi, Ltd., et al., No. 11-cv-06396;

Costco Wholesale Corporation v. Hitachi, Ltd., et al., No. 11-cv-06397;

P.C. Richard & Son Long Island Corporation, et al., v. Hitachi, Ltd., et al., No. 12-cv-02648;

Schultze Agency Services, LLC, et al. v. Hitachi, Ltd., et al., No. 12-cv-02649.

Pursuant to Stipulation and the Court's May 9, 2013 Order (*see* Dkt. No. 1666) ("May 9 Order"), the undersigned Defendants and Direct Action Plaintiffs ("DAPs") hereby submit their respective position statements regarding the Special Master's May 2, 2013 Report and Recommendation on Defendants' Motions to Dismiss the Direct Action Complaints (*see* Dkt. No. 1664) ("R&R").¹

As described in the Court's May 9 Order, to the extent the parties' position statements indicate that they intend to move to adopt a specific portion of the R&R, that will be deemed a "motion to adopt" under the Court's orders setting forth the procedure for moving to adopt a report and recommendation of the Special Master (*see, e.g.*, Dkt. Nos. 302, 446, 1298); the parties need not file a separate motion to adopt, and instead may address arguments in support of adopting portions of the R&R in their respective, forthcoming responsive briefs.

POSITION STATEMENTS

I. Motions to Dismiss Federal Cause of Action

A. Standing Under *Illinois Brick* Direct Purchaser Rule

1. Defendants intend to object to the Special Master's recommendation that Defendants' Motion to Dismiss be denied "to the extent the motion challenges the [DAPs'] right to proceed under the so-called 'owned or controlled' exception to *Illinois Brick*" (R&R at 5, ¶ 3). Defendants make this objection in order to preserve this issue for appeal. Defendants move to adopt the Special Master's recommendations as to the "cost-plus" and "co-conspirator" exceptions (R&R ¶¶ 1 & 2), and the Special Master's determinations that the issues of "the adequacy of" the DAPs' allegations regarding the owned-or-controlled exception and "whether [the DAPs] will be able to prove what is needed" to prevail under the owned-or-controlled exception are not currently before the Court (R&R ¶¶ 3 & 4).

¹ Defendants filed three Rule 12 motions on August 17, 2012 in the Direct Action Plaintiff cases, listed in the caption, above. For ease of reference and consistency with Special Master Legge's approach, this document refers interchangeably to all three motions as "Motions to Dismiss." Defendants technically sought judgment on the pleadings as to the complaint in *Electrograph Systems, Inc. v. Hitachi, Ltd.*, No. 11-cv-01656 (N.D. Cal.) (Dkt. No. 5) (Mar. 10, 2011), as Defendants have already filed answers to that complaint. Defendants have not yet made motions to dismiss in the following DAP actions: *Tech Data Corp. et al. v. Hitachi, Ltd. et al.*, Case No. 3:13-cv-00157 (N.D. Cal.); *Sharp Electronics Corp. et al. v. Hitachi, Ltd. et al.*, Case No. 13-cv-01173 (N.D. Cal.); and *Dell Inc. et al. v. Philips Electronics North America Corp., et al.*, Case No. 3:13-cv-02171 (N.D. Cal.).

2. DAPs move to adopt the Special Master's recommendation that the Defendants' motion to dismiss the DAPs' federal claims be denied for the reasons set forth in the Court's order of November 29, 2012. (R&R at 4-5.) However, the DAPs also intend to object to certain aspects of the Special Master's recommended order concerning the Defendants' motion to dismiss their federal claims. (*Id.*)

II. Motions to Dismiss State-Law Causes of Action

A. Statutes of Limitation

1. Defendants intend to object to the Special Master's recommendation that Defendants' Motion to Dismiss based upon the applicable state statutes of limitation be denied. (R&R at 7.)
2. DAPs move to adopt the Special Master's recommendation that the Defendants' motion to dismiss the DAPs' state law claims on statute of limitations grounds be denied. (R&R at 6-7.)

B. Prudential Standing

1. Defendants intend to object to the Special Master's recommendation that the Defendants' Motion to Dismiss on the grounds of lack of prudential standing be denied without prejudice. (R&R at 7-8.)
2. DAPs move to adopt the Special Master's recommendation that the Defendants' motion to dismiss the DAPs' state law claims on "prudential standing" grounds be denied without prejudice. (R&R at 7-8.)

C. Due Process

1. Defendants intend to object to the Special Master's recommendation that the Defendants' Motion to Dismiss on the grounds of lack of due process be denied without prejudice. (R&R at 8-9.)
2. DAPs move to adopt the Special Master's recommendation that the Defendants' motion to dismiss the DAPs' state law claims on due process grounds be denied without prejudice. (R&R at 8-9.)

D. Standing Under Associated General Contractors

1. Defendants move to adopt the Special Master's recommendations that the DAPs' claims under the laws of the states of California, Illinois, Michigan, Arizona, and Washington be dismissed based on *Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983). (R&R at 9-11.)

2. DAPs intend to object to the Special Master's recommendations that the DAPs' claims under the California Cartwright Act, as well as the laws of the states of Illinois, Michigan, Arizona, and Washington, be dismissed, with leave to amend, based on *Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983). (R&R at 9-11.)

III. Other Motions to Dismiss Claims Under Certain States' Laws

A. Consumer Protection Statutes of Massachusetts and Washington

1. Defendants move to adopt the Special Master's recommendations that the DAPs' claims arising under the consumer protection statutes of Massachusetts and Washington be dismissed without leave to amend. (R&R at 12.)
2. DAPs intend to object to the Special Master's recommendations that the DAPs' claims arising under the consumer protection statutes of Massachusetts and Washington be dismissed without leave to amend. (R&R at 12.)

B. Common Law Unjust Enrichment Claims

1. Defendants move to adopt the Special Master's recommendation that the Defendants' Motion to Dismiss the DAPs' claims arising under the common laws of unjust enrichment be granted. (R&R at 12-13.)
2. DAPs intend to object to the Special Master's recommendation that the DAPs' unjust enrichment claims be dismissed with leave to amend. (R&R at 12-13.)

C. California Restitution and Unjust Enrichment Claims

1. Defendants move to adopt the Special Master's recommendation that the DAPs' claims arising under California's laws for restitution or unjust enrichment be dismissed without leave to amend. (R&R at 13.)
2. DAPs intend to object to the Special Master's recommendation that the DAPs' California restitution and unjust enrichment claims be dismissed without leave to amend. (R&R at 13.)

D. California Unfair Competition Law Claims

1. Defendants will not object to the Special Master's recommendation that the Defendants' Motion to Dismiss the DAPs' claims arising under California's Unfair Competition Law be denied. (R&R at 13.)

2. DAPs move to adopt the Special Master's recommendation that Defendants' motion to dismiss the DAPs' California Unfair Competition Law claims be denied. (R&R at 13.)

E. Claims Under Nebraska, Nevada, and New York Law Prior to *Illinois Brick* Repealer Statutes

1. Defendants move to adopt the Special Master's recommendation that the DAPs' claims under Nebraska, Nevada, and New York law should be dismissed to the extent those claims are based on purchases pre-dating the effective date of those states' *Illinois Brick* repealer statutes (July 20, 2002; October 1, 1999; and December 23, 1998, respectively). (R&R at 13-14.)
2. DAPs intend to object to the Special Master's recommendation that the DAPs' Nebraska and Nevada law claims based on purchases that pre-date the enactment of *Illinois Brick* repealer statutes in those states be dismissed. (R&R at 13.) The DAPs do not intend to object to the Special Master's recommendation that the DAPs' New York law claims based on purchases prior to December 23, 1998 be dismissed. (R&R at 13-14.)

IV. Motions to Dismiss by Individual Defendants

A. Philips Defendants, Joined by LG Electronics Defendants

1. Philips Defendants move to adopt the Special Master's report and recommendation that the DAPs' claims against Koninklijke Philips Electronics N.V. and Philips Electronics North America Corporation should be dismissed without leave to amend on the grounds that the DAPs' claims against the Philips Defendants are barred under the applicable statute of limitations. (R&R at 14-15.)
2. LG Electronics Defendants move to adopt the Special Master's report and recommendation that the DAPs' claims against LG Electronics, Inc., LG Electronics USA, Inc., and LG Electronics Taiwan-Taipei, Ltd. should be dismissed without leave to amend on the grounds that the DAPs' claims against the LGE Defendants are barred under the applicable statute of limitations. (R&R at 14-15.)
3. DAPs intend to object to the Special Master's recommendations that the DAPs' claims against the Philips Defendants and the LGE Defendants² be dismissed on statute of limitations grounds without leave to amend. (R&R at 14-15.)

² The Philips Defendants are Koninklijke Philips Electronics N.V. and Philips Electronics North America Corporation and the LGE Defendants are LG Electronics, Inc. and LG Electronics USA, Inc.

B. **Samsung Electronics Defendants**

1. Samsung Electronics Defendants move to adopt the Special Master's recommendation that the DAPs' claims against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. be dismissed with leave to amend. (R&R at 16-17.)
2. DAPs intend to object to the Special Master's recommendation that the DAPs' claims against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. be dismissed with leave to amend. (R&R at 16-17.)

Dated: May 16, 2013

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